

**PROPOSED**

**TRAIL HEAD LEASE AGREEMENT**

**BETWEEN**

**CIBOLO CANYON CONSERVATION AND IMPROVEMENT DISTRICT NO. 1,  
Landlord**

**AND**

**THE CITY OF SAN ANTONIO, TEXAS  
Tenant**



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**TRAIL HEAD LEASE AGREEMENT**

THIS TRAIL HEAD LEASE AGREEMENT ("Lease") is between CIBOLO CANYON CONSERVATION AND IMPROVEMENT DISTRICT NO. 1 ("Landlord") and THE CITY OF SAN ANTONIO, TEXAS ("Tenant"). For valuable consideration the parties agree and act as follows:

1.

**Definitions.** The following terms have the meanings set forth below:

**Development Agreement.** That certain Development Agreement among City, Owner and Cibolo Canyon Conservation and Improvement District No. 1.

(b)

**Effective Date.** \_\_\_\_\_.

(c)

**Leased Premises.** The approximately 5.832 acre parcel of real property ("Landlord's Parcel") more particularly described on Exhibit A hereto together with (i) the improvements and fixtures which may be constructed by or on behalf of Tenant from time-to-time thereon, and (ii) any and all appurtenances, easements, and privileges pertaining to the foregoing.

(d)

**Lease Year.** Each twelve (12) month period commencing on the Effective Date, or anniversary of such date.

(e)

**Permittees.** All employees, agents, contractors, visitors, and invitees of a party to this Lease.

2.

Demise, Te

(a)

**Demise.** Landlord hereby leases to Tenant and Tenant accepts from Landlord, subject to the provisions of this Lease, the Leased Premises commencing on the date hereof and continuing until the expiration of the Term as hereinafter provided.

(b)

**Term.** The original term of this Lease ("Primary Term") shall commence as of the Effective Date and shall expire on the last day of the twenty-fifth (25<sup>th</sup>) year following the Effective Date. The Primary Term together with any extension thereof pursuant to paragraph 2(c) below is hereinafter referred to as the "Term." Notwithstanding the foregoing, Landlord and Tenant acknowledge and agree that the parties contemplate that Tenant may annex the Leased Premises, at which time Tenant will own the Leased Premises and this Lease shall terminate by its terms and be of no further force and effect.

d

**Options.** Tenant shall have the right to extend the Term ("Extension Options") for ten (10) consecutive five (5) year periods ("Renewal Terms") upon the same terms, conditions and provisions set out herein for the Primary Term. The first Renewal Term shall commence on the expiration of the Primary Term and each subsequent Renewal Term shall commence upon the expiration of the preceding Renewal Term. Each Extension Option shall be deemed to be automatically exercised by Tenant unless Tenant gives Landlord written notice that Tenant will not extend the Term, such notice to be given at least ninety (90) days prior to the expiration of the Primary Term with respect to the first Renewal Term, and at least ninety (90) days prior to the expiration of the Renewal Term then in effect with respect to the successive Renewal Terms thereafter.

d

**Quiet Enjoyment.** Upon Tenant's payment of all rent hereunder and observance and performance of all of the covenants, terms, and conditions to be observed and performed by Tenant pursuant to this Lease, Tenant shall have throughout the Term the peaceful, quiet, and undisturbed use and possession of the Leased Premises and all rights and privileges appertaining thereto, subject to the terms, conditions, and provisions of this Lease.

(

e) **Landlord's Title.** Landlord hereby covenants, represents, and warrants that it has good and indefeasible fee simple title to the Landlord's Parcel subject only to the matters set forth on Exhibit B attached here to and incorporated herein (the "Permitted Exceptions").



3.

**Rent.** Tenant shall pay Landlord the following amounts as rent ("Rent"): On the Effective Date, Tenant shall pay to Landlord One-hundred and No/100 Dollars (\$100.00) for the Primary Term. On the first day of each Renewal Term, Tenant shall pay to Landlord ten and No/100 Dollars (\$10.00). The Rent shall be paid at the address for Landlord set forth herein.

4.

**Tax Payment Obligation.** As of the Effective Date of this Lease neither Landlord nor Tenant is required to pay real property taxes. In the event, however, that any taxes or related charges are ever levied on the real property comprising the Leased Premises or the operations of Tenant thereon, Tenant agrees to pay all such taxes and charges, including any penalties or interest associated therewith, prior to the date of delinquency thereof and to deliver to Landlord copies of all such payments promptly upon payment thereof. Landlord, Tenant, or both Landlord and Tenant may contest the imposition of such taxes and the inclusion of this paragraph 4 in this Lease does not constitute a waiver of sovereign immunity or any other applicable defense to the imposition of such taxes.

5.

**Triple Net Lease.**

is the intent of Landlord and Tenant that this Lease shall be an absolute triple-net lease, and that all costs, expenses, or charges with respect to the Leased Premises incurred during the Term are the responsibility of Tenant. Landlord shall not be responsible for or required to pay any costs or liabilities whatsoever related to the Leased Premises or the operations thereon, whether created by Tenant or otherwise.

6.

**Construction Obligations and Delivery of Premises.**

**Landlord's Work.** Landlord, at its expense, shall construct improvements as described in Exhibit A to the Development Agreement (collectively, the "Tenant's Improvements") for Tenant's use of the Leased Premises. In lieu of Landlord's construction of Tenant's Improvements, Landlord may pay Tenant the amount of \$250,000, on or before Hotel Completion Date, as defined in the Development Agreement, so long as Tenant completes the Tenant's Improvements. In no event shall Landlord be required to spend an amount greater than \$250,000 for the construction of Tenant's Improvements.

**Construction Standards.** All of Tenant's Improvements shall be performed in a good and workmanlike manner and in accordance with all applicable laws, and all governmental permits required and/or issued therefor, and conforming to the design guidelines set forth on Exhibit C attached hereto and incorporated herein. Tenant shall not permit any liens to attach to Landlord's interest in the Leased Premises in connection with Tenant's construction of Tenant's Improvements and Tenant shall pay any cost and liability, including reasonable attorney's fees, arising out of or attributable to any mechanic's or other liens arising from Tenant's construction of Tenant's Improvements and cause the same to be cancelled or discharged.

**Environmental.** Tenant hereby agrees that no activity will be conducted on the Premises that will produce any environmentally hazardous or sensitive substances in violation of any statute of a governmental or quasi-governmental authority relating to pollution or protection of the environment ("Hazardous Substance"). Tenant shall be responsible for obtaining any required permits, paying any fees and providing any testing required by any governmental agency. If hazardous materials are released or otherwise discharged onto the Leased Premises during the Term, same shall be immediately removed with proper disposal, and all required cleanup procedures shall be diligently undertaken, pursuant to all applicable laws, by Tenant. Tenant shall pay any expense, cleanup costs, or other damage from any Hazardous Substance on the Leased Premises that violates any state or federal statute or regulation and which Hazardous Substance or condition existing during the Term of this Lease. The terms of this paragraph shall survive the expiration or termination of this Lease.

**Warranties Disclaimer.** The Leased Premises are being leased "AS IS," with Tenant accepting all defects, if any, and Landlord makes no warranty of any kind, express or implied, with respect to the physical conditions of the premises (without limitation, Landlord makes no warranty as to the habitability, fitness or suitability of the premises for a particular purpose nor as to the absence of any toxic or other hazardous substances). Tenant acknowledges that it is being given full opportunity to inspect the premises and to have qualified experts inspect the premises prior to the Rental Term Commencement Date. Tenant acknowledges that neither Landlord nor its agents have made any representations or promises with respect to the premises except as expressly set forth in this Lease, and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth herein. The taking of possession of the premises by Tenant shall be conclusive evidence that the Tenant has accepted the premises "AS IS".

7.

Signs, Alter

**Signage.** Tenant may place monument signs on the Leased Premises to the maximum extent allowed by the applicable governmental ordinances, subject to the construction guidelines set forth in Exhibit C attached hereto and incorporated herein. All signs which Tenant elects to construct or utilize pursuant to this paragraph shall be constructed and maintained in good repair at Tenant's sole cost and expense.

**Alterations.** Tenant may from time-to-time at its sole cost and expense make such alterations, additions, or changes to the interior or exterior of the improvements situated on the Leased Premises as Tenant may deem necessary or suitable; provided, however, that any such alterations, additions, or changes shall be subject to and in conformity with the construction standards set forth in paragraph 6(b) above.

c) **Repairs.**

**Tenant's Repairs.** Commencing from and after the Effective Date, Tenant shall, at its sole cost and expense, repair and maintain the Leased Premises (including parking area and drives) in good condition and repair, and in accordance with all applicable laws, rules, ordinances, orders, and regulations of any federal, state, county, municipal, and other governmental entities having jurisdiction over the Leased Premises. Tenant shall, at its sole cost and expense, diligently and promptly make or cause to be made all necessary repairs and replacements to the Leased Premises to maintain or comply with the foregoing sentence. Landlord shall not be required to furnish any services or facilities, including but not limited to providing security, lighting, or otherwise maintaining a safe environment, or to make any repairs to the Leased Premises. Without diminishing the foregoing obligations of Tenant, should Tenant fail to make any repairs which it is obligated to perform under this paragraph 7(c) within sixty (60) days after notification by Landlord of such failure, Landlord may, but shall in no event be required to, make such repairs for Tenant's benefit and the expense thereof shall constitute additional Rent which shall be immediately paid by Tenant to Landlord upon demand. In addition, Landlord shall have any and

all other remedies provided hereunder for a default by Tenant, should Tenant fail to comply with the foregoing.

¶

**Tenant's Fixtures.** Tenant may install in or upon the Leased Premises such fixtures and equipment as Tenant deems desirable and all of said items shall remain Tenant's property whether or not affixed or attached to the Leased Premises. Tenant may remove such items from the Leased Premises at any time but shall repair any damages caused by such removal.

8.

**Utilities.**

¶

**Service.** Following the Effective Date, Tenant shall, at its expense, provide to the Leased Premises such utility facilities as are necessary for water, gas, electricity, telephone, and sanitary sewer service in sufficient capacity for Tenant's intended use. Landlord agrees to cooperate with Tenant in such efforts and to execute such documents as may be required by governmental authorities reasonably requested by Tenant to obtain such service and all capacity required by Tenant for its purposes; provided that Landlord shall incur no cost or liability in connection therewith, other than its costs incurred in connection with the review of documents required by any governmental authority in connection with such service or capacity.

¶

**Utility Charges.** Commencing on the Effective Date, Tenant shall arrange with the appropriate utility suppliers for services to the Leased Premises, pay all connection, meter and service charges and deposits required to connect utilities to the Leased Premises, and pay such utility suppliers directly for such services.

9.

**Use, Trans**

¶

**Tenant's Use.** Tenant may use the Leased Premises for use as a trail head area. For purposes of this lease, use as a trail head area shall include access to the Open Space Restricted Tracts, as defined in the Development Agreement, \_\_\_\_\_, and \_\_\_\_\_.

b

**Assignment, Subletting.** Tenant may not assign all or any part of this Lease or sublet all or any part of the Leased Premises without Landlord's consent, which consent may be withheld by Landlord in Landlord's sole discretion.

10.

**Landlord's Right of Access.** Landlord, its employees, agents, and representatives, shall have the right to enter upon the Leased Premises at any time for the purpose of making inspections or performing any work (although it shall have no obligation whatsoever to do so) made necessary by reason of Tenant's default hereunder; provided, however, that, excepting cases of an emergency or unless Landlord obtains the Tenant's prior consent, Landlord shall not enter the Leased Premises without notification to Tenant at least twenty-four (24) hours in advance.

11.

**Claims and Insurance.**

(a)

**Claims.** Tenant shall defend and pay all claims, causes of action, damages, losses, costs, and expenses (including attorneys' fees) resulting or arising from or in connection with any and all injuries or death of any person or damage to any property caused or alleged to have been caused by any acts, omissions, or negligence of Tenant, its employees, agents, invitees, or guests, or any parties contracting with Tenant relating to the Premises including, without limitation, environmental conditions caused by Tenant or its Permittees during the term of this Lease. Tenant shall be responsible for all claims for personal injury, bodily injury or death, and property damage or destruction arising from or relating to the Premises or Tenant's activities thereon. This paragraph shall survive the expiration or termination of this Lease.

b

**Insurance.** Tenant shall maintain comprehensive general liability insurance coverage of not less than \$1,000,000 per single occurrence and \$2,000,000 general aggregate for the Leased Premises, naming Landlord as an additional insured. The policies of insurance required from Tenant shall be obtained from and maintained with an insurance company rated at least "A-X" by Best's and authorized or permitted to issue such insurance in the State of Texas. Such insurance shall contain a provision that coverage will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to Landlord. Certificates of insurance showing required coverage to be in force shall be filed with Landlord on or before the Effective Date.

12.

Destruction

the Leased Premises or to construct new or additional improvements thereon, Tenant shall remove any and all debris from the Leased Premises, raze the damaged improvements, remove any slabs attributable thereto, and re-seed the ground upon which the damaged improvements were situated, so as to cause the Leased Premises to be in a safe and attractive condition.

13.

Default.

Events of Default. The following are events of default ("Events of Default"):

¶

(1)

Rent. Tenant fails to pay when due any installment of Rent and such failure continues for thirty (30) days after Tenant's receipt of written notice from Landlord.

(2)

Other Obligations. Tenant fails to perform any obligation, covenant or condition or to comply with any provisions of the Lease (other than the payment of Rent) and such failure continues for sixty (60) days after written notice from the Landlord, unless said default requires more than sixty (60) days to cure and the Tenant commences a cure within sixty (60) days after written notice and thereafter maintains a diligent effort to complete the cure and thereafter completes the cure within a reasonable time period.

¶

Landlord's Remedies. Upon the occurrence of an Event of Default by Tenant, Landlord shall have one or more of the following remedies:

(1)

Termination. Landlord may terminate this Lease by written notice to Tenant. No re-entry or other act performed or omitted by Landlord shall be deemed to have terminated this Lease or any obligation of Tenant for payment of money or otherwise unless Landlord shall expressly notify Tenant in writing that Landlord has elected to terminate this Lease.

(2)

**Re-Entry.** Landlord may re-enter the Leased Premises and cause Tenant to be removed with legal process.

(3)

**Re-letting.** Landlord may re-let the Leased Premises or any part thereof in the name of the Landlord or the Tenant for a term or terms which may, at Landlord's option, be less than the period which would otherwise have constituted the balance of the Term and the Leased Premises may be used for any purpose, at the Landlord's discretion.

(4)

**Waiver of Landlord's Lien.** It is expressly understood and agreed that Landlord shall have no contractual or statutory landlord's lien or security interest of any kind applicable to Tenant's furniture, fixtures, equipment, inventory, or other property located within the Leased Premises, and Landlord hereby waives and relinquishes any such contractual or statutory landlord's lien applicable to Tenant's property located within the Leased Premises.

¶

**Landlord's Default and Tenant's Remedies.** Should there be any default or breach of this Lease on the part of Landlord, Tenant shall give Landlord written notice thereof, and Landlord shall correct such breach or default within sixty (60) days after such notice. Should Landlord fail to correct such breach or default, Tenant may pursue any legal or equitable remedy to which it is entitled.

¶

**Remedies Cumulative.** Except as provided herein, no remedy herein conferred upon or reserved to Landlord or Tenant shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

14.

**General Pr**

¶

**Notice.** "Notice" shall mean any notice, notification, consent, approval, request, designation, submission, specification, election or other communication required or permitted under this

Lease. All notices shall be in writing and shall be deemed to have been given and received the earlier of (1) the date the notice is delivered by one party to the other party personally or delivered to the party's address by a party or by a delivery service which records delivery dates, or (2) three (3) days after the notice is placed in the mail addressed to the other party at the party's address, properly stamped, certified or registered mail, return receipt requested. A party's address shall be as follows or as set forth in a notice to the other party:

**Landlord:**

**Cib**

**300 Convent, Suite 1500  
San Antonio, Texas 78205**

**With a copy to:**

**Akin, Gum**

**300 Convent, Suite 1500  
San Antonio, Texas 78205**

**Attention: M. Paul Martin**

**Tenant:**

**City of San Antonio**

**P.O. Box 839966**

**San Antonio, Texas 78283**

**Attention: Director of Development Services**

**With a copy to:**

**City Clerk and City Attorney**

**P.O. Box 839966**

**San Antonio, Texas 78283**

(b) **Entire Agreement.** Tenant acknowledges that neither Landlord nor any one on Landlord's behalf has made any representation, warranty, or promise with respect to the Leased Premises except as expressly set forth in this Lease. This Lease embodies the entire agreement and understanding between the parties as to the Leased Premises and supersedes all prior negotiations, agreements and understandings. Any provision of this Lease may be modified, waived, or discharged only by an instrument in writing signed by the party against which enforcement of such modification, waiver, or discharge is sought.



(c) **Brokerage Commission:** Landlord and Tenant acknowledge and agree that no brokerage fee or commission is owing in connection with this Lease. IF, BUT ONLY IF, ALLOWED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, TENANT AND LANDLORD SHALL INDEMNIFY AND HOLD THE OTHER HARMLESS AGAINST ANY COMMISSION, PAYMENT, INTEREST OR PARTICIPATION CLAIMED ON ACCOUNT OF THIS LEASE UNDER ANY ALLEGED AGREEMENT OR UNDERSTANDING ENTERED INTO BETWEEN OR ON THAT PARTY'S BEHALF WITH THE PERSON OR ENTITY CLAIMING THE COMMISSION, PAYMENT, INTEREST, OR PARTICIPATION.

(d) **Force Majeure.** Except for Tenant's payment of Rent, each party shall be excused from performing an obligation or undertaking provided for in this Lease for so long as such performance is prevented, delayed, retarded or hindered by an Act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, strike, lockout, action of labor unions, requisitions, laws, or orders of government or civil or military authorities.

(e) **Surrender.** Upon the expiration of the Term or earlier termination of this Lease, Tenant shall surrender the Leased Premises to Landlord. Tenant may remove all improvements, trade fixtures, inventory, furniture and any other personal property ("Tenant's Property") constructed or installed by Tenant. Any property not removed by Tenant within ninety (90) days following the expiration or earlier termination of this Lease under the provisions of this subparagraph may, at Landlord's option, be deemed to have been abandoned by Tenant and may be retained by Landlord without any claim by Tenant. Tenant shall in any event repair any damage to the Leased Premises caused by the removal of Tenant's Property.

(f) **Holding Over.** If Tenant does not surrender possession of the Leased Premises upon the expiration of the Term or earlier termination of this Lease, Tenant, at the option of the Landlord, shall thereafter become a Tenant from month-to-month subject to all other conditions, provisions and obligations of this Lease insofar as they are applicable to a month-to-month tenancy.

(g) **Applicable Law, Construction.** The laws of the State of Texas shall govern the validity, performance and enforcement of this Lease. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision. If any provision of this

Lease is capable of two constructions, one of which would render the provision invalid and the other of which would make the provision valid, the provision shall have the meaning which renders it valid.

(h) **Time of the Essence.** Time is of the essence with respect to each provision, term and covenant of this Lease.

(i) **Captions.** The captions are for convenience and do not limit or define the provisions of this Lease.

(j) **Gender, Number.** Whenever the sense of this Lease requires it, the use of (1) singular number shall be deemed to include the plural, (2) the masculine gender shall be deemed to include the feminine or neuter gender, and (3) the neuter gender shall be deemed to include the masculine and feminine gender.

(k) **Binding Effect.** All provisions of this Lease shall be binding upon and inure to the benefit of the parties and their respective personal representatives, heirs, successors and assigns.

*[SIGNATURE PAGE TO FOLLOW]*

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the dates set forth below to become effective on the Effective Date.

**LANDLORD:**

**CIBOLO CANYON CONSERVATION AND  
IMPROVEMENT DISTRICT NO. 1**

**By:**  
**Name:**  
**Title:**

**Date:** \_\_\_\_\_

**TENANT:**

**THE CITY OF SAN ANTONIO, TEXAS**

**By:**  
**Name:**  
**Title:**

**Date:** \_\_\_\_\_

**EXHIBITS:**

<b>Exhibit A:</b>	<b>Legal Description</b>
<b>Exhibit B:</b>	<b>Permitted Exceptions</b>
<b>Exhibit C:</b>	<b>Design Criteria</b>



**DRAFT**

**4:24 PM**

**03/15/02**

**EXHIBIT A**

**Legal Description**



**EXHIBIT B**

**Permitted Exceptions**





**EXHIBIT C**

**Design Criteria**

All plans for Tenant Improvements shall be approved by a Landlord representative, in writing, prior to commencement of construction thereof, which approval shall not be unreasonably withheld provided the plans comply with the following criteria:

[NEED CRITERIA]